

Explanatory statement

Marine Orders Part 58 Amendment 2011 (No 1) (International Safety Management Code)

Purpose

1. Marine Orders Part 58 Issue 2 (International Safety Management Code) (*MO 58*) gives effect to Chapter IX of SOLAS, which requires compliance with the International Management Code for the Safe Operation of Ships and for Pollution Prevention (known as the International Safety Management Code or ISM Code).
2. This instrument amends MO58 to give effect to the amendments made to the ISM Code by the Maritime Safety Committee (*MSC*) of the International Maritime Organization (*IMO*). IMO resolution MSC.273(85) adopted amendments to the ISM Code which entered into force on 1 July 2010.
3. The IMO Assembly at its 26th session adopted Resolution A.1022(26) which, in turn, adopted *Revised Guidelines on Implementation of the International Safety Management (ISM) Code by Administrations*. This resolution revokes resolution A.913(22) (which adopted the existing guidelines) with effect from 1 July 2010.

Authority

4. Part IV of the *Navigation Act 1912* (the *Act*) deals with ships and shipping. Subsection 191 (1) of the Act (which is in Part IV) provides that the regulations may make provide for giving effect to the Safety Convention which is the *International Convention for the Safety of Life at Sea, 1974 (SOLAS)*.
5. Subsection 425(1) of the Act provides that the Governor-General may make regulations necessary or convenient for carrying out or giving effect to the Act.
6. Subsection 425 (1AA) of the Act enables the Australian Maritime Safety Authority to make orders about matters in Part IV of the Act in relation to which provision may be made by regulations.
7. This instrument is made under subsection 425(1AA) of the Act.

Overview

8. This instrument gives effect to amendments to instruments made in accordance with an international convention (SOLAS) to which Australia is a signatory. The impact of this instrument is therefore minor or machinery in nature. The Office of Best Practice Regulation (OBPR) has advised that, based on the information available, no further analysis in the form of a regulation impact statement is required (OBPR reference number 11891).
9. The amendments made to the ISM Code adopted by resolution MSC.273(85) are mainly to clarify the intent of elements of the Code and include:
 - section 1.1.10: revision of the definition of major non-conformity
 - section 1.2.2: introduction of the need for some form of assessment of risks
 - section 5.1.5: modification of the wording to clarify the intent of the element
 - section 7: addition of a new title to clarify the intent of the element
 - section 8.1: deletion of certain words to clarify the intent of the element
 - section 9.2: introduction of a requirement for the company to establish procedures for preventive action for identified potential emergency shipboard situation
 - section 10.3: clarification of the intent in identifying critical standby systems

- section 12.1: requiring internal audits to be carried out at intervals not exceeding 12 months
 - section 12.2: requiring a company to periodically review the effectiveness of its Safety Management System
 - section 13: introduction of three new paragraphs (13.1, 13.2 and 13.3) in relation to validity and extension of Safety Management Certificate
 - introduction of a new section at the end of existing Safety Management Certificates
10. As a result of amendments to the ISM Code adopted by resolution MSC.273(85), it was also necessary to revise the Guidelines on the implementation of the International Safety Management (ISM) Code by Administrations contained in Assembly resolution A.913(2). Consequently, the 26th Assembly of IMO adopted resolution A.1022(26), which revokes resolution A.913(22) with effect from 1 July 2010.
11. This instrument also makes some changes of a drafting nature.

Consultation

12. A copy of the draft amendments in the Order was placed on the AMSA website for public comment. A copy of the draft amendments in the Order was circulated for comment to a range of stakeholders, including:

- | | |
|--------------------------------------------------------------------------------------|------------------------------------------|
| • ASP Ship Management Pty Ltd | • Leeuwin Ocean Adventure Foundation Ltd |
| • Australian Shipowners Association | • Mermaid Marine Australia Limited |
| • Austral Fisheries Pty Ltd | |
| • Australian Shipbuilders Association | • National Marine Safety Committee |
| • Bhagwan Marine Pty Ltd | • North Star Cruises Australia Pty Ltd |
| • BHP Billiton Petroleum Pty Ltd | • Offshore Marine Services |
| • Company of Master Mariners Association | • P & O Maritime Services P/L |
| • Coral Princess Cruises Pty Ltd | • Perkins Shipping Pty Ltd |
| • Department of Infrastructure, Transport, Regional Development and Local Government | • Port of Brisbane Pty Ltd |
| • DMS Maritime Pty Ltd | • SeaRoad Shipping Pty Ltd |
| • Gardine Marine Services UK | • Seaswift Pty Ltd |
| • Hanson Construction Materials Pty Ltd | • Shell Tankers Australia Pty Ltd |
| • International Maritime Services Pty Ltd | • Shipping Australia Limited |
| • Lamnalco Australia Pty Ltd | • STASCO Ship Management |
| • | • Svitzer |
| | • TAFE NSW |

13. The following consultation has also occurred:

- AMSA issued Marine Notice 8-2010 on 31 March to highlight to industry the changes to the ISM Code with effect from 1 July 2010.
- AMSA held two ISM Code/ DPA forums, one in Fremantle on 14 May and the other in Sydney on 28 May. At the each forum the proposed changes to the ISM Code was an agenda item for discussion. Representatives from all AMSA ISM Code companies attended at least one of the forums.
- All letters written to AMSA ISM Code companies between December 2009 and March 2010 contained a paragraph advising of the proposed changes to the ISM Code with effect from 1 July 2010.

Document incorporated by reference

14. International Management Code for the Safe Operation of Ships and for Pollution Prevention is incorporated by reference. A copy (as in force on 1 July 2011) is set out in MO 58. A copy of the Code may be purchased from:

International Maritime Organization (IMO)
4 Albert Embarkment, London SE1 7SR
Telephone +44(0)20 7735 7611
Facsimile +44(0)20 7587 3210
IMO website: <http://www.imo.org>

15. There is a list of distributors who maintain permanent stock of all IMO publications on the IMO website. Information on obtaining copies of IMO documents mentioned in this Order is also available from AMSA's website: www.amsa.gov.au or via email: international.relations@amsa.gov.au

Commencement

16. This instrument commences on 1 July 2011.

Contents of this instrument

17. The amending items are set out in 2 Schedules, with Schedule 2 commencing immediately after Schedule 1. The amendments have been separated into 2 Schedules to avoid any confusion when the next compilation of MO 58 is prepared about how the amendments work.

Schedule 1

18. Item [1] inserts a naming provision into MO 58. This reflects current drafting practice to include a naming provision in each Marine Order.

19. Item [2] is a minor drafting change.

Provision 2 of MO58, definition of the *Guidelines*

20. Item [3] replaces the existing definition of the *Revised Guidelines on Implementation of the International Safety Management (ISM) Code by Administrations (the Guidelines)* in MO 58 by including reference to the most recent amendments to these guidelines that were adopted by the IMO. Item [6] omits the existing definition.

Provision 2 of MO58, definition of *ISM Code*

21. Item [4] replaces the existing definition of the International Management Code for the Safe Operation of Ships and for Pollution Prevention (ISM Code) in MO 58 by including reference to the most recent amendments to the ISM Code that were adopted by the IMO.

22. Item [5] inserts a new definition of *penal provision*.

23. Item [7] omits a provision that is unnecessary because it deals with matters covered by the Acts Interpretation Act 1901.

24. Items [8] to [12] are minor drafting changes.

Appendix 1

25. Appendix 1 of MO 58 sets out a copy of the ISM Code and item [13] inserts a new Appendix 1 to reflect the changes that were recently adopted by the IMO.

Appendix 2

26. Appendix 2 of MO 58 sets out a copy of the Guidelines and item [13] includes a new Appendix 2 to reflect the changes that were recently adopted by the IMO.

Appendix 3

27. Appendix 3 of MO 58 contains the forms for implementing the ISM Code. Item [19] inserts new forms of endorsements which are necessary to reflect the amendments that were made to the ISM Code. These new endorsements are as a result of the amendments made to the ISM Code in item [13] and relate to extending the validity of Safety Management Certificates in certain circumstances.

Appendix 3

28. Items [14] to [18] and item [20] make minor changes to the forms set out in Appendix 3.

29. Items [21] and [22] make some minor drafting changes.

Schedule 2

30. Schedule 2 re-locates existing footnotes not affected by other amending items as textual notes.

Legislative instrument

31. This instrument is a legislative instrument for the *Legislative Instruments Act 2003*.

Making the Order

32. This Order has been made by the Chief Executive Officer of the Australian Maritime Safety Authority, in accordance with subsection 49 (4) of the *Australian Maritime Authority Act 1990*.